

STATE OF WISCONSIN

APR 9 1982

BEFORE THE MEDIATOR/ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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 In The Matter of The Mediation/ :
 Arbitration Between :
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 SCHOOL DISTRICT OF WAUSAU : Case XVI
 : No. 26286 MED/ARB-735
 and : Decision No. 18189-A
 :
 WAUSAU EDUCATION ASSOCIATION :
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APPEARANCES :

Mulcahy & Wherry, S.C., by Ronald J. Rutlin, appearing on behalf of the School District of Wausau.

Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North, appearing on behalf of the Wausau Education Association.

ARBITRATION HEARING BACKGROUND:

On November 20, 1980, the undersigned was notified by the Wisconsin Employment Relations Commission of appointment as mediator/arbitrator, pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act in the matter of impasse between the School District of Wausau, hereinafter referred to as the District, and the Wausau Education Association, hereinafter referred to as the Association. Pursuant to the statutory requirements, the undersigned conducted mediation proceedings between the District and the Association on December 16, 1981. Said mediation effort failed to result in voluntary resolution of the dispute. The matter proceeded to arbitration on January 15, 1982 in Wausau, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant arguments. The proceedings were not transcribed. Post hearing briefs were filed by the parties and exchanged through the arbitrator on February 10, 1982.

THE ISSUES:

One issue remains at impasse between the parties, compensation for department chairmen. The final offers are as follows:

DISTRICT'S FINAL OFFER:

"Revise Appendix 'B' by changing compensation schedule for Department Chairmen at the High School to provide as follows:

'Additional compensation for Department Chairmen shall be based on the number of full-time equivalent teachers within the departments including the department head based upon the following schedule:

- 1-4 full-time equivalent teachers - 5%
- 5-8 full-time equivalent teachers - 6%

9-12 full-time equivalent teachers - 7%
13 or more full-time equivalent teachers - 8%

(Current practice of released time will be eliminated.)"

ASSOCIATION'S FINAL OFFER:

"The District shall continue to provide released time for certain department chairmen at East and West High Schools per the current practice during the term of the 1980-1982 collective bargaining agreement between the Association and the District."

STATUTORY CRITERIA:

Since no voluntary impasse procedure was agreed to between the parties regarding the above impasse, the undersigned, under the Municipal Employment Relations Act, is required to choose the entire final offer of one of the parties on all unresolved issues.

Section 111.79(4)(cm)7 requires the Mediator/Arbitrator to consider the following criteria in the decision process:

- A. The lawful authority of the municipal employer.
- B. Stipulations of the parties.
- C. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- D. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and comparable communities.
- E. The average consumer prices for goods and services, commonly known as the cost-of-living.
- F. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- I. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES:

The District, relying upon comparisons and the interest and welfare of the public, asserts these criteria establish the reasonableness of its offer. Making both internal and external comparisons, the District argues the comparisons clearly show the District's offer is more reasonable. The District asserts the job descriptions of the high school department chairmen and the middle school curriculum leaders indicate that while there are two areas where these positions differ, the majority of the duties and the size of the departments are the same. It continues curriculum leaders are reimbursed at 3% of salary with no release time while department chairmen receive 5% of salary and up to one period of release time per day. It concludes that since both positions perform nearly identical functions, its offer is supported by this comparability.

In addition, the District conducted a survey of job responsibilities for department chairmen in the athletic conference districts and in state-wide districts between 6,000 and 12,000 population to determine whether the duties were comparable and whether the compensation was comparable. It concludes the survey shows its department chairmen perform duties which are similar, if not identical, to other department chairmen and yet their compensation exceeds that paid most of the other chairmen.

The District argues its position is also more reasonable when the current and projected financial circumstances of the District are considered. Contending its financial resources are shrinking, the District cites a drop in property valuation, a decrease in pupil population, a reduction in categorical aids, an increase in property tax levy, and a shrinkage of property tax base as restraints placed on the District which should provide support for the District's offer. It indicates as a result of these financial circumstances, it has taken steps to curtail expenditures. It states there were significant across the board funding reductions in 1980-81 and the staff was reduced. It continues, 1981-82 was the "first time ever" it had to borrow for repair and remodeling expenses, the fringe benefit portion of the budget continues to increase, and it has other costs which it must fund over which it has no control, such as utility increases and public transportation. Thus, the District concludes, its financial condition establishes the need to accept the District's position.

The District challenges the Association's contention that there is a need for release time. It indicates it proved middle school curriculum leaders perform nearly identical duties in departments of the same size without release time and department chairmen in similar sized districts perform nearly identical duties without release time. Further, it contends many of the duties performed by its chairmen are not distributed evenly throughout the year, but are concentrated at the beginning and the end of the school year. Consequently, it declares there is no demonstrated need for release time.

Finally, the District asserts that not only has it shown a need for a change in the release time provision, but it has offered to pay for the elimination of the time which more than compensates for that loss of benefit. Concluding there has been no showing of harm which would result from the District's proposal, the District declares it has met the burden of proof needed to support its position.

The Association, asserting it merely wishes to maintain

the status quo for the practice of release time, argues the District does not establish a compelling need for the change in working conditions, has not refuted the amount of time needed to perform the duties of a department chairman and has not shown evidence that its finances justifies its final offer. Declaring the District is advocating the elimination of the status quo which has existed as a long-standing past practice, the Association posits "compelling need" rather than "comparability" must be the basis for deciding if the District's offer is more reasonable. It continues the District has failed to establish a compelling need but instead has relied upon comparisons to justify its position. It contends that in instances where the benefits have already been secured, a comparison argument is not sufficient to justify the removal of an existing system. The Association persists contending there has been no change in duties since the unit determination in 1971. Further, it indicates the District testified that it does not plan to remove any duties from the responsibilities of the chairmen. The Association continues that through its survey, and through testimony of administration witnesses, it has established certain duties cannot be accomplished outside the student or school day and that the duties require a substantial number of hours in order to be accomplished. It concludes, since there have been no changes in duties, and since it is established there is the need for release time, its position is the more reasonable.

The Association declares that the comparison of middle school curriculum leader and high school department chairmen does not justify the elimination of the benefit. It states that while there are similarities between the responsibilities of these two positions, there are also differences. Further, it posits the differences in duties and in pay between these positions have been long-standing and there is no showing that the middle school curriculum leaders ever had a release time provision which was removed through collective bargaining.

Challenging the District's contention that it offers a buy out for the benefit, the Association declares the District's buy out amounts to approximately \$480 at the maximum amount for the larger departments and less for smaller departments. Using the \$480 figure, the Association calculates the buy out amounts to \$2.67 per hour. It concludes this amount does not meet the quid pro quo standards sometimes accepted by arbitrators.

Finally, the Association avers the District's testimony regarding its financial situation does not meet the "compelling need" standard. It states the District testified it has consistently been under cost controls and that it has adequate cash reserve for cash flow purposes, both indications it is in strong financial condition. The Association concludes that since the District is financially sound, the arguments advanced by the District should not be considered as establishing need for the District's position.

DISCUSSION:

At issue between the parties is whether or not the status quo relevant to high school department chairmen compensation should be maintained. Not a clause heretofore in the collective bargaining agreement, the Association has proposed the District's past practice be continued, while the District has proposed eliminating the release time practice and providing additional compensation for the elimination of the release time

in certain instances. The undersigned finds there is no persuasive reason for why the status quo should be changed.

It is not uncommon for arbitrators to require a "compelling need" be shown and/or that a quid pro quo exist in order to justify the removal of benefits secured by a party through negotiations. The undersigned recognizes in the question at hand that the benefit is not a negotiated benefit. However, it may be assumed that the shaping of bargaining demands over the years has encompassed the silent recognition of existing benefits.¹ Although compensation for the department chairmen has not been a negotiated clause, as a benefit, it has existed for 20 years. Further, this benefit was maintained even after the bargaining unit was formed in 1971 and the duties were changed. This benefit, under these circumstances, forms an implied term of the contract. Thus, in order to eliminate the benefit, the same standard exists as if it were a negotiated clause.

The District neither established a need for change nor provided an offer of buy out sufficient to create a quid pro quo for the benefit. The District argues primarily that both external and internal comparisons support its position. While the survey submitted by the District pertaining to duties and responsibilities of department chairmen indicates that some of the same duties are performed throughout the comparable districts, the undersigned questions the reliability of such a survey. It is clear in reviewing the exhibits the types of responsibilities assigned to department chairmen varied by individual school district. Further, there is no way to account for each school district's expectations of performance, demands placed upon the chairmen by the structures of their individual school systems, etc. Thus, each school district's decision as to what is appropriate compensation for department chairmen duties necessarily is a function of the time and commitment which is expected of the chairs by each district.

The internal comparison between the high school department chairmen and the middle school curriculum leaders is more relevant. Despite the relevancy, however, the undersigned does not find the arguments advanced regarding this comparison sufficient to support change in the status quo. It is undisputed that the high school department chairmen have always been compensated in a different manner than the middle school curriculum coordinators. Further, while their duties may be similar or identical, there was no showing that performance of similar duties required the same time commitments or involvement. It was established that the middle schools operate in a different manner than the high schools which leads the undersigned to conclude the duties of the department chairmen and the curriculum coordinators may also be performed in a different manner.

The District also contended its financial condition should support the need for a change in release time benefit. The District demonstrated it had taken steps to curtail its expenditures. Further, it showed it has and continues to expect to have a decline in pupil population and in property tax base. These factors, it contended not only affect the District's financial resources, but will continue to affect them. The undersigned finds the evidence submitted is not persuasive. Although the

¹Elkouri and Elkouri, How Arbitration Works, Third Edition, Page 398.

District has made some budgetary adjustments, there is no showing the District has an inability to pay for services or programs nor is there a showing that maintaining the status quo relevant to the release time benefit creates a substantial financial burden to the District.

In regard to the buy out offered by the District, the undersigned finds it is not sufficient to establish a quid pro quo without the establishment of a need for change. If the District's offer were to be implemented, the District would gain over 60² release periods per week, a potential savings of over \$30,000², in return for which it offers \$5,191. Further, this money would be distributed so that some chairs would receive no increase in compensation for loss of release time and one chair would receive as much as \$747 for the loss of time. The average compensation for all chairs would be \$371 since the implementation of the offer would affect 14 of the department chairs.

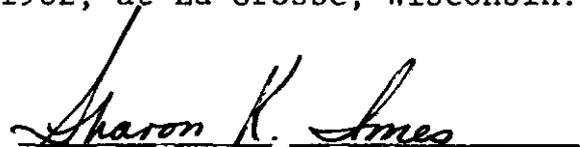
Absent a showing of need for change or a showing of financial difficulties if the status quo were to be maintained, the undersigned finds no reason why she should implement a change in the working conditions which is more appropriately accomplished voluntarily by the parties. Further, the inconsistency of the compensation, together with the minimum amount offered to buy out the clause, leads the undersigned to conclude the Association's offer is more reasonable.

Thus, having reviewed the evidence and arguments and after applying the statutory criteria and having concluded the Association's offer is more reasonable, the undersigned makes the following

AWARD

The final offer of the Association, along with the stipulations of the parties which reflect prior agreements in bargaining, as well as those provisions of the predecessor collective bargaining agreement which remained unchanged during the course of bargaining, are to be incorporated into the collective bargaining agreement as required by statute.

Dated this 1st day of April, 1982, at La Crosse, Wisconsin.


Sharon K. Ines
Mediator/Arbitrator

SKI/mls

²Testimony by the District indicated the potential savings could be over \$100,000 but the figure used is an approximation of savings accomplished by the replacement of 2½ teachers at the base rate.